

- Sec.  
 4872. Acquisition of sensitive materials from non-allied foreign nations: prohibition.  
 4873. Additional requirements pertaining to printed circuit boards.  
 4874. Award of certain contracts to entities controlled by a foreign government: prohibition.  
 4875. Prohibition on acquisition of personal protective equipment and certain other items from non-allied foreign nations.

### Editorial Notes

#### AMENDMENTS

2021—Pub. L. 117–81, div. A, title XVII, §1701(t)(1), Dec. 27, 2021, 135 Stat. 2150, amended Pub. L. 116–283, div. A, title XVIII, §1870(d)(1), Jan. 1, 2021, 135 Stat. 4286, which added this analysis, by substituting “Contracts: consideration of national security objectives” for “Acquisition of sensitive materials from non-allied foreign nations: prohibition” in item 4871 and “Acquisition of sensitive materials from non-allied foreign nations: prohibition” for “Award of certain contracts to entities controlled by a foreign government: prohibition” in item 4872 and by adding item 4874.

Pub. L. 117–81, div. A, title VIII, §802(b)(2)(A), title XVII, §1701(e)(2)(B), Dec. 27, 2021, 135 Stat. 1813, 2138, added items 4873 and 4875. Amendment by section 1701(e)(2)(B), which directed adding item 4873 to the analysis for this chapter, was executed by adding item 4873 to analysis for this subchapter to reflect the probable intent of Congress.

### Statutory Notes and Related Subsidiaries

#### ENHANCED AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN AFRICA IN SUPPORT OF CERTAIN ACTIVITIES

Pub. L. 114–328, div. A, title VIII, §899A(a)–(e), Dec. 23, 2016, 130 Stat. 2336, 2337, provided that:

“(a) IN GENERAL.—Except as provided in subsection (c), in the case of a product or service to be acquired in support of covered activities in a covered African country for which the Secretary of Defense makes a determination described in subsection (b), the Secretary may conduct a procurement in which—

“(1) competition is limited to products or services from the host nation;

“(2) a preference is provided for products or services from the host nation; or

“(3) a preference is provided for products or services from a covered African country, other than the host nation.

“(b) DETERMINATION.—

“(1) IN GENERAL.—A determination described in this subsection is a determination by the Secretary of any of the following:

“(A) That the product or service concerned is to be used only in support of covered activities.

“(B) That it is in the national security interests of the United States to limit competition or provide a preference as described in subsection (a) because such limitation or preference is necessary—

“(i) to reduce overall United States transportation costs and risks in shipping products in support of operations, exercises, theater security cooperation activities, and other missions in the African region;

“(ii) to reduce delivery times in support of covered activities; or

“(iii) to promote regional security and stability in Africa.

“(C) That the product or service is of equivalent quality to a product or service that would have otherwise been acquired without such limitation or preference.

“(2) REQUIREMENT FOR EFFECTIVENESS OF ANY PARTICULAR DETERMINATION.—A determination under

paragraph (1) shall not be effective for purposes of a limitation or preference under subsection (a) unless the Secretary also determines that—

“(A) the limitation or preference will not adversely affect—

“(i) United States military operations or stability operations in the African region; or

“(ii) the United States industrial base; and

“(B) in the case of air transportation, an air carrier holding a certificate under section 41102 of title 49, United States Code, is not reasonably available to provide the air transportation.

“(c) INAPPLICABILITY OF AUTHORITY TO PROCUREMENT OF ITEMS ON ABILITYONE PROCUREMENT CATALOG.—The authority under subsection (a) may not be used for the procurement of any good that is contained in the procurement list described in section 8503(a) of title 41, United States Code, if such good can be produced and delivered by a qualified non profit agency for the blind or a nonprofit agency for other severely disabled in a timely fashion to support mission requirements.

“(d) REPORT ON USE OF AUTHORITY.—Not later than December 31, 2017, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of the authority in subsection (a). The report shall include, but not be limited to, the following:

“(1) The number of determinations made by the Secretary pursuant to subsection (b).

“(2) A list of the countries providing products or services as a result of determinations made pursuant to subsection (b).

“(3) A description of the products and services acquired using the authority.

“(4) The extent to which the use of the authority has met the one or more of the objectives specified in clause (i), (ii), or (iii) of subsection (b)(1)(B).

“(5) Such recommendations for improvements to the authority as the Secretary considers appropriate.

“(6) Such other matters as the Secretary considers appropriate.

“(e) DEFINITIONS.—In this section:

“(1) COVERED ACTIVITIES.—The term ‘covered activities’ means Department of Defense activities in the African region or a regional neighbor.

“(2) COVERED AFRICAN COUNTRY.—The term ‘covered African country’ means a country in Africa that has signed a long-term agreement with the United States related to the basing or operational needs of the United States Armed Forces.

“(3) HOST NATION.—The term ‘host nation’ means a nation that allows the Armed Forces and supplies of the United States to be located on, to operate in, or to be transported through its territory.

“(4) PRODUCT OR SERVICE OF A COVERED AFRICAN COUNTRY.—The term ‘product or service of a covered African country’ means the following:

“(A) A product from a covered African country that is wholly grown, mined, manufactured, or produced in the covered African country.

“(B) A service from a covered African country that is performed by a person or entity that—

“(i) is properly licensed or registered by appropriate authorities of the covered African country; and

“(ii) as determined by the Chief of Mission concerned—

“(I) is operating primarily in the covered African country; or

“(II) is making a significant contribution to the economy of the covered African country through payment of taxes or use of products, materials, or labor that are primarily grown, mined, manufactured, produced, or sourced from the covered African country.”

#### PROHIBITION ON CONTRACTING WITH THE ENEMY

Pub. L. 113–291, div. A, title VIII, subtitle E, Dec. 19, 2014, 128 Stat. 3450, as amended by Pub. L. 115–232, div.

A, title VIII, § 872, title XII, § 1251(b)(2), Aug. 13, 2018, 132 Stat. 1905, 2053; Pub. L. 116-92, div. A, title VIII, § 822, Dec. 20, 2019, 133 Stat. 1490, as amended by Pub. L. 116-283, div. A, title X, § 1081(c)(3), Jan. 1, 2021, 134 Stat. 3873; Pub. L. 117-263, div. A, title VIII, § 820, Dec. 23, 2022, 136 Stat. 2709, provided that:

**“SEC. 841. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY.**

“(a) IDENTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense shall, in conjunction with the Director of National Intelligence and in consultation with the Secretary of State, establish in each covered combatant command a program to identify persons and entities within the area of responsibility of such command that—

“(1) provide funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency directly or indirectly to a covered person or entity; or

“(2) fail to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency are provided directly or indirectly to a covered person or entity.

“(b) NOTICE OF IDENTIFIED PERSONS AND ENTITIES.—

“(1) NOTICE.—Upon the identification of a person or entity as being described by subsection (a), the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) shall be notified, in writing, of such identification of the person or entity.

“(2) RESPONSIVE ACTIONS.—Upon receipt of a notice under paragraph (1), the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) may notify the heads of contracting activities, or other appropriate officials of the agency or command, in writing of such identification.

“(3) MAKING OF NOTIFICATIONS.—Any written notification pursuant to this subsection shall be made in accordance with procedures established to implement the revisions of regulations required by this section.

“(c) AUTHORITY TO TERMINATE OR VOID CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS AND TO RESTRICT FUTURE AWARD.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to provide that, upon notice from the head of an executive agency (or the designee of such head) or the commander of a covered combatant command (or the specified deputies of the commander) pursuant to subsection (b), the head of contracting activity of an executive agency, or other appropriate official, may do the following:

“(1) Restrict the award of contracts, grants, or cooperative agreements of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contract, grant, or cooperative agreement would provide funds received under such contract, grant, or cooperative agreement directly or indirectly to a covered person or entity.

“(2) Terminate for default any contract, grant, or cooperative agreement of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the contractor, or the recipient of the grant or cooperative agreement, has failed to exercise due diligence to ensure that none of the funds received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity.

“(3) Void in whole or in part any contract, grant, or cooperative agreement of the executive agency con-

cerned upon a written determination by the head of contracting activity or other appropriate official that the contract, grant, or cooperative agreement provides funds directly or indirectly to a covered person or entity.

“(d) CLAUSE.—

“(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised to require that—

“(A) the clause described in paragraph (2) shall be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date that is 270 days after the date of the enactment of this Act; and

“(B) to the maximum extent practicable, each covered contract, grant, and cooperative agreement of an executive agency that is awarded before the date of the enactment of this Act shall be modified to include the clause described in paragraph (2).

“(2) CLAUSE DESCRIBED.—The clause described in this paragraph is a clause that—

“(A) requires the contractor, or the recipient of the grant or cooperative agreement, to exercise due diligence to ensure that none of the funds, including goods and services, received under the contract, grant, or cooperative agreement are provided directly or indirectly to a covered person or entity; and

“(B) notifies the contractor, or the recipient of the grant or cooperative agreement, of the authority of the head of contracting activity, or other appropriate official, to terminate or void the contract, grant, or cooperative agreement, in whole or in part, as provided in subsection (c).

“(3) TREATMENT AS VOID.—For purposes of this section:

“(A) A contract, grant, or cooperative agreement that is void is unenforceable as contrary to public policy.

“(B) A contract, grant, or cooperative agreement that is void in part is unenforceable as contrary to public policy with regard to a segregable task or effort under the contract, grant, or cooperative agreement.

“(4) PUBLIC COMMENT.—The President shall ensure that the process for revising regulations required by paragraph (1) shall include an opportunity for public comment, including an opportunity for comment on standards of due diligence required by this section.

“(e) REQUIREMENTS FOLLOWING CONTRACT ACTIONS.—Not later than 270 days after the date of the enactment of this Act, the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be revised as follows:

“(1) To require that any head of contracting activity, or other appropriate official, taking an action under subsection (c) to terminate, void, or restrict a contract, grant, or cooperative agreement notify in writing the contractor or recipient of the grant or cooperative agreement, as applicable, of the action.

“(2) To permit the contractor or recipient of a grant or cooperative agreement subject to an action taken under subsection (c) to terminate or void the contract, grant, or cooperative agreement, as the case may be, an opportunity to challenge the action by requesting an administrative review of the action under the procedures of the executive agency concerned not later than 30 days after receipt of notice of the action.

“(f) ANNUAL REVIEW; PROTECTION OF CLASSIFIED INFORMATION.—

“(1) ANNUAL REVIEW.—The Secretary of Defense, in conjunction with the Director of National Intelligence and in consultation with the Secretary of

State shall, on an annual basis, review the lists of persons and entities previously covered by a notice under subsection (b) as having been identified as described by subsection (a) in order to determine whether or not such persons and entities continue to warrant identification as described by subsection (a). If a determination is made pursuant to such a review that a person or entity no longer warrants identification as described by subsection (a), the Secretary of Defense shall notify the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or the specified deputies of the commander) in writing of such determination.

“(2) PROTECTION OF CLASSIFIED INFORMATION.—Classified information relied upon to make an identification in accordance with subsection (a) may not be disclosed to a contractor or a recipient of a grant or cooperative agreement with respect to which an action is taken pursuant to the authority provided in subsection (c), or to their representatives, in the absence of a protective order issued by a court of competent jurisdiction established under Article I or Article III of the Constitution of the United States that specifically addresses the conditions upon which such classified information may be so disclosed.

“(g) DELEGATION OF CERTAIN RESPONSIBILITIES.—

“(1) COMBATANT COMMAND RESPONSIBILITIES.—The commander of a covered combatant command may delegate the responsibilities in this section to any deputies of the commander specified by the commander for purposes of this section. Any delegation of responsibilities under this paragraph shall be made in writing.

“(2) NONDELEGATION OF RESPONSIBILITY FOR CERTAIN ACTIONS.—The authority provided by subsection (c) to terminate, void, or restrict contracts, grants, and cooperative agreements, in whole or in part, may not be delegated below the level of head of contracting activity, or equivalent official for purposes of grants or cooperative agreements.

“(h) ADDITIONAL RESPONSIBILITIES OF EXECUTIVE AGENCIES.—

“(1) SHARING OF INFORMATION ON SUPPORTERS OF THE ENEMY.—The Secretary of Defense shall, in consultation with the Director of the Office of Management and Budget, carry out a program through which agency components may provide information to heads of executive agencies (or the designees of such heads) and the commanders of the covered combatant commands (or the specified deputies of the commanders) relating to persons or entities who may be providing funds, including goods and services, received under contracts, grants, or cooperative agreements of the executive agencies directly or indirectly to a covered person or entity. The program shall be designed to facilitate and encourage the sharing of risk and threat information between executive agencies and the covered combatant commands.

“(2) INCLUSION OF INFORMATION ON CONTRACT ACTIONS IN FAPIIS AND OTHER SYSTEMS.—Upon the termination, voiding, or restriction of a contract, grant, or cooperative agreement of an executive agency under subsection (c), the head of contracting activity of the executive agency shall provide for the inclusion in the Federal Awardee Performance and Integrity Information System (FAPIIS), or other formal system of records on contractors or entities, of appropriate information on the termination, voiding, or restriction, as the case may be, of the contract, grant, or cooperative agreement.

“(3) REPORTS.—The head of contracting activity that receives a notice pursuant to subsection (b) shall submit to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specified deputies) a report on the action, if any, taken by the head of contracting activity pursuant to subsection (c), including a determination not to terminate, void, or restrict the contract, grant, or coopera-

tive agreement as otherwise authorized by subsection (c).

“(i) REPORTS.—

“(1) IN GENERAL.—Not later than March 1 of 2023, and annually thereafter, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authorities in this section in the preceding calendar year, including the following:

“(A) For each instance in which an executive agency exercised the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

“(i) The executive agency taking such action.

“(ii) An explanation of the basis for the action taken.

“(iii) The value of the contract, grant, or cooperative agreement voided or terminated.

“(iv) The value of all contracts, grants, or cooperative agreements of the executive agency in force with the person or entity concerned at the time the contract, grant, or cooperative agreement was terminated or voided.

“(B) For each instance in which an executive agency did not exercise the authority to terminate, void, or restrict a contract, grant, and cooperative agreement pursuant to subsection (c), based on a notification under subsection (b), the following:

“(i) The executive agency concerned.

“(ii) An explanation of the basis for not taking the action.

“(C) Specific examples where the authorities under this section can not be used to mitigate national security threats posed by vendors supporting Department operations because of the restriction on using such authorities only with respect to contingency operations.

“(D) A description of the policies ensuring that oversight of the use of the authorities in this section is effectively carried out by a single office in the Office of the Under Secretary of Defense for Acquisition and Sustainment.

“(2) FORM.—Any report under this subsection may, at the election of the Director—

“(A) be submitted in unclassified form, but with a classified annex; or

“(B) be submitted in classified form.

“(j) INAPPLICABILITY TO CERTAIN CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—The provisions of this section do not apply to contracts, grants, and cooperative agreements that are performed entirely inside the United States.

“(k) NATIONAL SECURITY EXCEPTION.—Nothing in this section shall apply to the authorized intelligence or law enforcement activities of the United States Government.

“(l) CONSTRUCTION WITH OTHER AUTHORITIES.—Except as provided in subsection (m), the authorities in this section shall be in addition to, and not to the exclusion of, any other authorities available to executive agencies to implement policies and purposes similar to those set forth in this section.

“(m) COORDINATION WITH CURRENT AUTHORITIES.—

“(1) REPEAL OF SUPERSEDED AUTHORITY RELATED TO CENTCOM.—[Repealed section 841 of Pub. L. 112-81, effective 270 days after Dec. 19, 2014. See below.]

“(2) REPEAL OF SUPERSEDED AUTHORITY RELATED TO DEPARTMENT OF DEFENSE.—[Repealed section 831 of Pub. L. 113-66, effective 270 days after Dec. 19, 2014. See below.]

“(3) USE OF SUPERSEDED AUTHORITIES IN IMPLEMENTATION OF REQUIREMENTS.—In providing for the implementation of the requirements of this section by the Department of Defense, the Secretary of Defense may use and modify for that purpose the regulations and procedures established for purposes of the implementation of the requirements of section 841 of the National Defense Authorization Act for Fiscal Year 2012 [Pub. L. 112-81] and section 831 of the National De-

fense Authorization Act for Fiscal Year 2014 [Pub. L. 113-66].

“(n) SUNSET.—The provisions of this section shall cease to be effective on December 31, 2025.

“SEC. 842. ADDITIONAL ACCESS TO RECORDS.

“(a) CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS.—

“(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], applicable regulations shall be revised to provide that, except as provided under subsection (c)(1), the clause described in paragraph (2) may, as appropriate, be included in each covered contract, grant, and cooperative agreement of an executive agency that is awarded on or after the date of the enactment of this Act.

“(2) CLAUSE.—The clause described in this paragraph is a clause authorizing the head of the executive agency concerned, upon a written determination pursuant to paragraph (3), to examine any records of the contractor, the recipient of a grant or cooperative agreement, or any subcontractor or subgrantee under such contract, grant, or cooperative agreement to the extent necessary to ensure that funds, including goods and services, available under the contract, grant, or cooperative agreement are not provided directly or indirectly to a covered person or entity.

“(3) WRITTEN DETERMINATION.—The authority to examine records pursuant to the contract clause described in paragraph (2) may be exercised only upon a written determination by the contracting officer, or comparable official responsible for a grant or cooperative agreement, upon a finding by the commander of a covered combatant command (or the specified deputies of the commander) or the head of an executive agency (or the designee of such head) that there is reason to believe that funds, including goods and services, available under the contract, grant, or cooperative agreement concerned may have been provided directly or indirectly to a covered person or entity.

“(4) FLOWDOWN.—A clause described in paragraph (2) may also be included in any subcontract or subgrant under a covered contract, grant, or cooperative agreement if the subcontract or subgrant has an estimated value in excess of \$50,000.

“(b) REPORTS.—

“(1) IN GENERAL.—Not later than March 1 of 2023, 2024, and 2025, the Director of the Office of Management and Budget shall submit to the appropriate committees of Congress a report on the use of the authority provided by this section in the preceding calendar year.

“(2) ELEMENTS.—Each report under this subsection shall identify, for the calendar year covered by such report, each instance in which an executive agency exercised the authority provided under this section to examine records, explain the basis for the action taken, and summarize the results of any examination of records so undertaken.

“(3) FORM.—Any report under this subsection may be submitted in classified form.

“(c) RELATIONSHIP TO EXISTING AUTHORITIES APPLICABLE TO CENTCOM.—

“(1) APPLICABILITY.—This section shall not apply to contracts, grants, or cooperative agreements covered under section 842 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1513; [former] 10 U.S.C. 2313 note).

“(2) EXTENSION OF CURRENT AUTHORITIES APPLICABLE TO CENTCOM.—[Amended section 842(d)(1) of Pub. L. 112-81, formerly set out as a note under section 2313 of this title.]

“SEC. 843. DEFINITIONS.

“In this subtitle:

“(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ‘appropriate committees of Congress’ means—

“(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

“(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

“(2) CONTINGENCY OPERATION.—The term ‘contingency operation’ has the meaning given that term in section 101(a)(13) of title 10, United States Code.

“(3) CONTRACT.—The term ‘contract’ includes a contract for commercial items but is not limited to a contract for commercial items.

“(4) COVERED COMBATANT COMMAND.—The term ‘covered combatant command’ means the following:

“(A) The United States Africa Command.

“(B) The United States Central Command.

“(C) The United States European Command.

“(D) United States Indo-Pacific Command.

“(E) The United States Southern Command.

“(F) The United States Transportation Command.

“(5) COVERED CONTRACT, GRANT, OR COOPERATIVE AGREEMENT DEFINED.—The term ‘covered contract, grant, or cooperative agreement’ means a contract, grant, or cooperative agreement with an estimated value in excess of \$50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

“(6) COVERED PERSON OR ENTITY.—The term ‘covered person or entity’ means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

“(7) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given that term in section 133 of title 41, United States Code.

“(8) HEAD OF CONTRACTING ACTIVITY.—The term ‘head of contracting activity’ has the meaning described in section 1.601 of the Federal Acquisition Regulation.

“(9) UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.—The term ‘Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards’ means the guidance issued by the Office of Management and Budget in part 200 of chapter II of title 2 of the Code of Federal Regulations.”

[Pub. L. 116-283, div. A, title X, §1081(c)(3), Jan. 1, 2021, 134 Stat. 3873, which directed technical amendment of section 821 of Pub. L. 116-92 by inserting “Carl Levin and Howard P. ‘Buck’ McKeon” before “National Defense Authorization Act for Fiscal Year 2015”, was executed to section 822 of Pub. L. 116-92, which amended the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), set out above, to reflect the probable intent of Congress.]

[Pub. L. 116-283, div. A, title X, §1081(c), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(c)(3) of Pub. L. 116-283 to section 821 (probably should be 822) of Pub. L. 116-92, which amended section 841 of Pub. L. 113-291, set out above, is effective as of Dec. 20, 2020 (probably should be Dec. 20, 2019), and as if included in Pub. L. 116-92.]

**§ 4871. Contracts: consideration of national security objectives**

(a) DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT.—The head of an agency shall require a firm or a subsidiary of a firm that submits a bid or proposal in response to a solicitation issued by the Department of Defense to disclose in that bid or proposal any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) that is owned or controlled (whether directly or indirectly) by a foreign government or an agent or instrumentality of a for-

eign government, if such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A)<sup>1</sup> of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(b) PROHIBITION ON ENTERING INTO CONTRACTS AGAINST THE INTERESTS OF THE UNITED STATES.—Except as provided in subsection (c), the head of an agency may not enter into a contract with a firm or a subsidiary of a firm if—

(1) a foreign government owns or controls (whether directly or indirectly) a significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary); and

(2) such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A)<sup>1</sup> of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(c) WAIVER.—(1)(A) If the Secretary of Defense determines under paragraph (2) that entering into a contract with a firm or a subsidiary of a firm described in subsection (b) is not inconsistent with the national security objectives of the United States, the head of an agency may enter into a contract with such firm or subsidiary if in the best interests of the Government.

(B) The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records shall include the following:

(i) The identity of the foreign government concerned.

(ii) The nature of the contract.

(iii) The extent of ownership or control of the firm or subsidiary concerned (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government concerned or the agency or instrumentality of such foreign government.

(iv) The reasons for entering into the contract.

(2) Upon the request of the head of an agency, the Secretary of Defense shall determine whether entering into a contract with a firm or subsidiary described in subsection (b) is inconsistent with the national security objectives of the United States. In making such a determination, the Secretary of Defense shall consider the following:

(A) The relationship of the United States with the foreign government concerned.

(B) The obligations of the United States under international agreements.

(C) The extent of the ownership or control of the firm or subsidiary (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government or an agent or instrumentality of the foreign government.

(D) Whether payments made, or information made available, to the firm or subsidiary under the contract could be used for purposes hostile to the interests of the United States.

(d) LIST OF FIRMS SUBJECT TO PROHIBITION.—(1) The Secretary of Defense shall develop and maintain a list of all firms and subsidiaries of firms that the Secretary has identified as being subject to the prohibition in subsection (b).

(2)(A) A person may request the Secretary to include on the list maintained under paragraph (1) any firm or subsidiary of a firm that the person believes to be owned or controlled by a foreign government described in subsection (b)(2). Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do exist, the Secretary shall include the firm or subsidiary on the list.

(B) A firm or subsidiary of a firm included on the list may request the Secretary to remove such firm or subsidiary from the list on the basis that it has been erroneously included on the list or its ownership circumstances have significantly changed. Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do not exist, the Secretary shall remove the firm or subsidiary from the list.

(C) The Secretary shall establish procedures to carry out this paragraph.

(3) The head of an agency shall prohibit each firm or subsidiary of a firm awarded a contract by the agency from entering into a subcontract under that contract in an amount in excess of \$25,000 with a firm or subsidiary included on the list maintained under paragraph (1) unless there is a compelling reason to do so. In the case of any subcontract requiring consent by the head of an agency, the head of the agency shall not consent to the award of the subcontract to a firm or subsidiary included on such list unless there is a compelling reason for such approval.

(e) DISTRIBUTION OF LIST.—The Administrator of General Services shall ensure that the list developed and maintained under subsection (d) is made available to Federal agencies and the public in the same manner and to the same extent as the list of suspended and debarred contractors compiled pursuant to subpart 9.4 of the Federal Acquisition Regulation.

(f) APPLICABILITY.—(1) This section does not apply to a contract for an amount less than \$100,000.

(2) This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(g) REGULATIONS.—The Secretary of Defense, after consultation with the Secretary of State, shall prescribe regulations to carry out this section. Such regulations shall include a definition of the term “significant interest”.

(Added Pub. L. 99-500, §101(c) [title X, §951(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-164, and Pub. L. 99-591, §101(c) [title X, §951(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-164, §2327; Pub. L. 99-661, div. A, title IX, formerly title IV, §951(a)(1), Nov. 14, 1986, 100 Stat. 3944, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-180, div. A, title XII, §1231(8), Dec. 4, 1987, 101 Stat. 1160; Pub. L.

<sup>1</sup> See References in Text note below.